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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 KURT ANGELONE,  
12 Plaintiff,

13 v.

14 MICHAEL FURST, *et al*,  
15 Defendants.

Case No. C07-5538RJB-KLS

ORDER REGARDING  
PLAINTIFF'S MOTION FOR  
EXTENSION OF TIME AND  
REQUEST FOR RECUSAL

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21 This matter has been referred to United States Magistrate Judge Karen L. Strombom pursuant to  
22 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Rule MJR3 and MJR4. Plaintiff has filed a civil  
23 rights complaint pursuant to 42 U.S.C. § 1983. The matter is before the Court on plaintiff's filing of a  
24 motion for extension of time to respond to defendants' motion for summary judgment and his accusation  
25 of prejudice on the part of the undersigned judge contained therein. (Dkt. #103, 128).

26 I. Plaintiff's Motion for Extension of Time

27 On October 28, 2008, the undersigned granted plaintiff's first motion for extension of time to  
28 respond to defendants' summary judgment motion. (Dkt. #105 and #110). In that motion, which was filed

1 on October 7, 2008, plaintiff stated he needed an extension of time until November 17, 2008, because he  
2 was in the process of being transferred to a new institution, and he already had had most, if not all, of his  
3 legal property taken from him for shipment to that institution. The Court granted this request, because it  
4 did not seem to be unreasonable at the time.

5 On November 12, 2008, plaintiff filed his second motion for extension of time to respond to  
6 defendants' motion for summary judgment. This time, plaintiff stated he was unable to meet the above  
7 extended deadline, because he was "under the influence of a powerful narcotic" he apparently takes for  
8 his pain, as well as morphine. (Dkt. #114 -2, p. 1). This, he claimed, dulled his senses "to such a degree"  
9 that it took him much longer to organize his thoughts. As such, plaintiff alleged it was "extremely  
10 difficult" for him "to maintain and keep up with this lawsuit" at that time. (Id. at p. 1-2).

11 Plaintiff further stated if he was given enough time (until December 26, 2008) "to do what I must  
12 do in this situation" given his need to "be on morphine indefinitely" – meaning he might need even more  
13 time than already asked for – than he would be able to respond to defendants' motion. (Id. at p. 2). The  
14 undersigned, however, found this request for additional time to be not well taken. First, plaintiff did not  
15 state when he first allegedly came under influence of his current medication regime. Apparently he was  
16 not under such influence when he made his first request for an extension of time, and there is no  
17 indication that he was under the influence prior to the filing of his second motion for extension of time,  
18 merely five days before his response was due. (Dkt. #120).

19 The undersigned further found plaintiff's own recent filings in this matter belied his claims of  
20 inability to timely and effectively respond to defendants' motion for summary judgment, or to otherwise  
21 prosecute his lawsuit. For example, plaintiff clearly was able to file his second motion for extension of  
22 time, and to provide a declaration in support thereof shortly before his response was required. Further,  
23 just two days prior to filing that motion, plaintiff filed 18 pages of objections to a September 30, 2008  
24 report and recommendation recommending defendant Furst's motion for summary judgment be granted,  
25 again supported by a declaration as well as by attached exhibits. (Dkt. #113). While the undersigned thus  
26 was inclined to deny plaintiff's second motion for extension of time, he was granted an additional amount  
27 of time, until December 10, 2008, in which to file his response, given that the deadline for filing it already  
28 had passed.

1 In his present motion for extension of time, which was filed on December 11, 2008, plaintiff again  
2 states more time is needed to respond to defendants motion for summary judgment, because of the alleged  
3 effects of the morphine he claims to be taking. (Dkt. #128). But the undersigned finds the reasons noted  
4 above for denying his second, prior motion for extension of time are still valid, and plaintiff has provided  
5 no further bases for why those reasons once more should be applied here to deny his current motion. As  
6 such, plaintiff's third motion for extension of time to respond to defendants' summary judgment motion  
7 (Dkt. #128)<sup>1</sup> hereby is DENIED.

8 II. Plaintiff's Accusation of Prejudice

9 Plaintiff's motion for extension of time also contains the following statement:

10 The plaintiff believes that this Magistrate Judge is prejudice [sic] to the plaintiff [sic]  
11 suit and is partial to the defendants and has acted for and on the defendants [sic] behalf  
12 as their advocate, and she should not preside over any of the plaintiffs [sic] actions  
regarding this case.

13 (Dkt. #128, p. 2). Although plaintiff does not state he is formally moving for recusal of the undersigned,  
14 and he has not properly noted it separately as a motion for recusal or filed an affidavit in support thereof  
15 in the manner required and described below, the undersigned, in an abundance of caution here, shall treat  
16 the above statements as such a motion.

17 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify herself in any  
18 proceeding in which her impartiality "might reasonably be questioned." A federal judge also shall  
19 disqualify herself in circumstances where she has a personal bias or prejudice concerning a party or  
20 personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1).

21 Pursuant to 28 U.S.C. § 144:

22 Whenever a party to any proceeding in a district court makes and files a timely and  
23 sufficient affidavit that the judge before whom the matter is pending has a personal bias or  
prejudice either against him or in favor of any adverse party, such judge shall proceed no  
further therein, but another judge shall be assigned to hear such proceeding.

24 Under both 28 U.S.C. § 144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if "a  
25 reasonable person with knowledge of all the facts would conclude that the judge's impartiality might  
26 reasonably be questioned." Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir.1993). This is an

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28 <sup>1</sup>On December 23, 2008, plaintiff filed yet another motion for extension of time to respond to defendants' motion for  
summary judgment (Dkt. #132), which the undersigned also has denied (see Dkt. #136) for different, though equally valid, reasons.

1 objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact.  
2 Preston v. United States, 923 F.2d 731, 734 (9th Cir.1992); United States v. Conforte, 624 F.2d 869, 881  
3 (9<sup>th</sup> Cir.1980). In Liteky v. United States, 510 U.S. 540 (1994), the United States Supreme Court further  
4 explained the narrow basis for recusal:

5 [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.  
6 . . . [O]pinions formed by the judge on the basis of facts introduced or events occurring in  
7 the course of the current proceedings, or of prior proceedings, do not constitute a basis for  
8 a bias or partiality motion unless they display a deep-seated favoritism or antagonism that  
9 would make fair judgment impossible. Thus, judicial remarks during the course of a trial  
10 that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases,  
11 ordinarily do not support a bias or partiality challenge.

12 Id. at 555.

13 The undersigned makes rulings in each case based upon the issues presented by the parties or upon  
14 *sua sponte* review by the Court, and has done so here. In addition, the undersigned has no personal bias  
15 or reason to be partial to one side or the other in this case. Indeed, plaintiff has set forth no specific  
16 reasons as to why he feels that the undersigned is prejudiced against him, and, as noted above, has failed  
17 to file the affidavit required by 28 U.S.C. § 144.<sup>2</sup> Accordingly, the undersigned finds no reason to recuse  
18 herself voluntarily from this case, and declines to do so.

19 Based on the foregoing, the undersigned submits that there is no reasonable basis for a voluntary  
20 recusal in this instance. Pursuant to Local Rule General Rule 8 this matter is referred to the chief judge.  
21 Accordingly it is hereby ordered that the undersigned **DECLINES** to recuse voluntarily, and plaintiff's  
22 motion for recusal of the undersigned is **REFERRED** to Chief Judge Robert S. Lasnik for decision.

23 The clerk is directed to send a copy of this order to plaintiff, and to place the motion for the  
24 recusal of the undersigned on Judge Lasnik's motion calender.

25 **THIS ACTION IS STAYED PENDING RESOLUTION OF THE RECUSAL ISSUE. AS**  
26 **SUCH, NO PARTY SHALL FILE ANY MOTIONS OR OTHER PAPERS IN THIS MATTER**  
27 **UNTIL SUCH TIME AS THE RECUSAL ISSUE IS RESOLVE. ANY MOTIONS OR PAPERS**  
28 **FILED DURING THAT TIME SHALL NOT BE CONSIDERED BY THE COURT.**

This action is **STAYED** pending resolution of the recusal issue.

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<sup>2</sup>Plaintiff did file an affidavit with his motion for extension of time (see Dkt. #128, pp. 3-4), but that affidavit focuses solely on the reasons he believes he is entitled to such an extension, and not the undersigned's alleged bias.

1 The clerk shall send a copy of this Order to plaintiff and to counsel for defendants.

2 DATED this 28th day of January, 2008.

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6 Karen L. Strombom  
7 United States Magistrate Judge  
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